



Federal Communications Commission
Washington, D.C. 20554

October 24, 2003

Stephen T. Perkins
Cavalier Telephone, LLC
2134 West Laburnum Avenue
Richmond, Virginia 23227-4342

Karen Zacharia
Kathleen M. Grillo
Verizon Virginia, Inc.
1515 North Court House Road
Arlington, Virginia 22201

Re: **Arbitration of Interconnection Agreement Between Cavalier and Verizon,**
WCB Docket No. 02-359, Final Proposed Contract Language and *Ex Parte*
Communications

Dear Counsel:

This letter memorializes the procedures regarding submission of final proposed contract language for the Arbitrator's consideration in reaching a decision on the unresolved issues in this proceeding, as relayed to the parties during the October 22, 2003 joint teleconference. In addition, we reiterate our instructions on *ex parte* contacts related to this proceeding.

Final Proposed Contract Language

On October 22, 2003, the staff convened a joint teleconference to resolve issues regarding the parties' proposed contract language. Specifically, we addressed the differences in proposed contract language in Cavalier's Arbitration Petition, Verizon's Answer/Response, and the various JDPLs submitted by the parties on September 22, October 10, and October 21, respectively. The Bureau clarified the Commission's rules relating to "final" proposed contract language in section 252(e) arbitration proceedings as summarized below, as well as specified the procedures to govern the parties' submission of final proposed contract language for the Arbitrator's consideration.

Section 51.807(d)(2) of the rules, 47 C.F.R. § 51.807(d)(2), permits the parties to continue to negotiate during the arbitration process after the filing of "final offers," the proposed contract language identified by the parties in both the Arbitration Petition and Answer/Response. This rule also permits parties to "submit subsequent final offers following such negotiations." Thus, Cavalier and Verizon are entitled to submit new proposed language for our consideration relating to an unresolved issue where such language results from negotiations that have occurred between the parties on that issue since the filing of the Arbitration Petition. If, however, subsequently proposed contract

language raises an issue not identified in the Petition or Answer/Response, that new issue is excluded from consideration¹

Where a party seeks to revise its previously proposed contract language and “submits” it to the Arbitrator for consideration, it must do so in a manner that clearly enables the Bureau (and the opposing party) to identify the new language that is being proposed pursuant to ongoing negotiations on that issue. The JDPL is merely a decisional tool for staff use. It is required to enable staff to easily refer to the disputed issues to remind themselves, in summary fashion, of each party’s position on an issue, the facts that support it and the contract language each proposes. Introducing new contract language for the first time in a JDPL does not qualify as a proper submission of new language pursuant to section 51.807(d)(2). Rather, the contract terms in the JDPL should merely lay out excerpts of information already before the Commission, and not be used as a vehicle to introduce new language for the first time. Thus, unless the Arbitrator and opposing party has received some type of written correspondence filed in this proceeding, such as a letter or pleading that clearly identifies the newly proposed contract language that party is offering resulting from ongoing negotiations, the contract language reflected in a JDPL must mirror the language proposed in the Arbitration Petition and Answer/Response. Similarly, to the extent entire issues or sub-issues are resolved during the arbitration process, the Petitioner is obligated to inform the Arbitrator in writing, pursuant to Item H.4. of the Procedural PN, and to similarly submit revised proposed contract language, if necessary, to reflect such resolution.

To ensure that the Bureau properly receives the parties’ final proposed contract language in accordance with the rules and our procedures, to afford the opposing party an opportunity to address such language, and to enable the remainder of this proceeding to be handled expeditiously, the Arbitrator establishes the following requirements:²

- By October 24, 2003, any revised proposed contract language resulting from negotiations on an unresolved issue after September 5, 2003 (the date Verizon filed its Answer/Response) that a party wishes to submit for the Arbitrator’s consideration must be filed via a letter or pleading in this proceeding pursuant to the procedures set forth in Item H.3 of the Procedural PN.³ This will

¹ See 47 U.S.C. § 252(b)(4)(A). *see also* Item A.3 of the August 25, 2003. Procedural Public Notice (Procedural PN) in this proceeding, DA 03-2733. Accordingly, we reiterate our determination that Verizon’s proposed contract language with respect to section 11.7.6 dealing with rates for unbundled loops which Verizon provides over IDLC loops was not raised or identified in its Answer/Response and therefore is not an issue before us in this proceeding.

² See *Procedures for Arbitration Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended*, 16 FCC Red 6231, 6233 para. 8 (2001) (the arbitrator shall conduct such proceedings as he or she deems necessary and appropriate), *see also* Item H.1 of the Procedural PN, DA 03-2733.

³ We understand the parties are in agreement that most, if not all, of the revised Verizon language included in the October 21 version of the Revised IDPL, which the Arbitrator requested at the close of the hearing on October 17, is not subject to objection by Cavalier with the exception of language relating to section 11.7.6 addressed above. *See supra* note 1. Thus we anticipate that Verizon, at a minimum, will be submitting new final offer language for consideration on October 24.

give the other party an opportunity to address such language in its brief or reply brief.

- By October 29, 2003, a chart entitled “Parties Final Proposed Contract Language” shall be filed in the form that the JDPLs were filed, excluding the summary of positions and any related factual support. To be clear, this chart should only reflect parties’ final proposed contract language relating to any unresolved issues or sub-issues.
- Parties are encouraged to continue to negotiate after October 24, 2003, but may not submit any additional proposed language for Commission consideration after that date except to the extent the parties resolve an issue or sub-issue in its entirety and it is necessary to eliminate that issue from proposed contract language in dispute

Ex Parte Contacts

As the parties are aware, this arbitration proceeding is a restricted proceeding for *ex parte* purposes and therefore subject to section 1.1208 of the rules prohibiting *ex parte* presentations. In view of the fact that there are ongoing proceedings before the Commission that directly relate to issues being considered in this proceeding, to the extent either party makes *ex parte* presentations as defined in section 1.1202 of the rules in any other proceeding or matter, including the *Triennial Review Order*, that relate to issues which are the subject matter of this arbitration proceeding, that party is directed to afford the other party the opportunity to be present when such an *ex parte* presentation occurs, if oral, and to immediately serve a copy of any written presentation on the opposing party as well as to take any other measure required under Subpart H of our rules relating to *ex parte* communications to ensure compliance with section 1.1208.

If the parties have any questions regarding this correspondence, specifically, or the process governing the remainder of this proceeding , generally, please contact Terri Natoli at (202) 418-1574 or at Terri.Natoli@fcc.gov.

Sincerely,



Richard Lerner
Associate Bureau Chief
Wireline Competition Bureau

cc Richard U. Stubbs, Cavalier
Kimberly A Newman, Counsel for Verizon